



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 10/714,256 | 11/14/2003 | Jacques Vincent | 144-214 CT1 (35619-191315) | 3617 |
| 23973 | 7590 | 03/10/2005 | EXAMINER | |
| DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996 | | | ASHLEY, BOYER DOLINGER | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3724 | |
| DATE MAILED: 03/10/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/714,256

Applicant(s)

VINCENT, JACQUES

Examiner

Boyer D. Ashley

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/14/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. The claims are objected to because they lack a proper introduction. The present Office practice is to insist that each claim must be the object of a sentence stating with "I (or we) claim", "The invention claimed is", or the equivalent. M.P.E.P. § 608.01(m). Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, there is no positive antecedent basis for "the cutting plane".

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

Art Unit: 3724

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,732,622. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ in claim terminology but encompass the same subject matter, that is, claims 1-15 anticipates the claim language of the instant application claims 1-11. The differences between the two sets of claims are merely that claims 1-15 of '622 are more specific, that is, narrower than the broader claims 1-11 of the instant application.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips, U.S. Patent 1,974,194.

Phillips discloses the same invention as claimed including, for example, vegetable cutter frame with at least one blade (27) facing a slot (the area in front of the cutter) and two side rails (21); a guide chamber with a loading volume (the area shown between top 47 and sides 43 as shown in Figure 2) acting in conjunction with a press

Art Unit: 3724

down cap (top 45 and 46). It should be noted that the press down cap is designed to be gripped by a user to move the guide chamber to and fro along the rails while exerting a constant pressure on the workpiece in the loading volume area so as to press them against the at least one cutting blade. It should be noted that the phrase "while exerting a constant pressure on the vegetables contained in the loading volume ..." in claim 1 is merely functional/intended use not defining any specific structure. Therefore, the Phillips merely has to be capable of performing said intended use. In this case, Phillips is clearly is capable of providing constant pressure on the vegetable to be sliced merely from the user regulating their hand pressure on the handle.

As to claim 2, Phillips includes two parallel side uprights (20) connected by a transverse operating handle (35/37) and forming the guide rails (21).

As to claim 3, Phillips includes means (34-38) for adjusting the depth of cut.

As to claim 4, Phillips discloses the means for adjusting the depth of cut having a ramp (31-32) fitted so as to be capable of translational motion parallel (up and down) to the cutting plane (plane of the blade) and facing the blade at a first end to form the slot (see Figures 2 and 11).

As to claim 5, Phillips includes means (39 locks the ramp in place) keeping the first end of the ramp at a constant distance from the blade. It should be noted that the term "short" has not been defined and any distance in Phillips can be considered "short".

As to claims 6-7, Phillips includes at least one foldable foot (26).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Zirkiev, U.S. Patent 5,745,999.

Phillips discloses the invention substantially as claimed except for at least two removable and interchangeable transverse blade which are selectively; however, the examiner takes official notice that it is old and well known in the art to use multiple interchangeable slicing blades with vegetable cutters for the purpose of creating different types of cuts in vegetables, for example, as taught by Zirkiev. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use multiple interchangeable slicing blades with the device of Phillips in order to create different types of cuts in vegetables.

Allowable Subject Matter

11. Claims 10 and 11 appear to be allowable over the prior art of record.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to anticipate or make obvious the structure of manual vegetable cutter with a holder with a hollow vegetable receiving portion and central opening therein with rod supported for reciprocal movement such that the rod has two ends, one for engagement with a user and other for engagement with the vegetable

such that the vegetables are pressed against the blade by the user through the rod while the holder maintains a constant vertical position relative to the guide rails.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
March 6, 2005